

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DOROTHY GOOSBY, SAMUEL
PRIOLEAU, XAVIER MORALES,
and MILADYS MORALES,
Plaintiffs,

- against -

TOWN BOARD OF THE TOWN OF
HEMPSTEAD, NEW YORK, et al.,
Defendants.

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MEMORANDUM
AND ORDER

88-CV-2453 (JG)

A P P E A R A N C E S:

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JOHN GLEESON, United States District Judge:

The case is back before me to implement the remedy ordered on October 20, 1997.

Pursuant to that order, the at-large electoral system for the election of the six members of Town

Board of the Town of Hempstead (the “Town”) will be replaced by an electoral system consisting of six single-member voting districts.

The parties have failed to agree on the timing of the new election. The Town initially wanted it to occur on April 11, 2000; it has since modified its position, and now seeks an election in April, May or June. For their part, the plaintiffs seek an order directing that the special election occur on November 7, 2000, as part of the general election.

In support of its effort to schedule the election this spring, the Town cites New York Public Officers Law § 42(3), which prescribes that special elections to fill certain vacancies in office occur within 30 to 40 days of the governor’s “proclamation.” However, the election at issue here will not simply fill an unexpected vacancy in office. It will create a Town Board pursuant to a new electoral system.

The Town also argues that scheduling the special election to occur on the date of the general election would contravene “strong and well-rooted New York State public policy against local elections being held concurrently with national and state elections.” (Letter from Evan H. Krinick, Esq., to the Court dated February 14, 2000 (“Krinick Letter”).) It is true that such a policy exists, and is entitled to some deference. On the other hand, it is not monolithic, especially with regard to special elections. For example, the statute to which the Town has invited my attention *requires* town elections to occur at the even-year general election in certain circumstances. See N.Y. Pub. Off. Law § 42(1) (McKinney 1988); see also 1978 N.Y. Op. Atty. Gen. (Inf.) 258, 1978 WL 27637 (N.Y.A.G.) (citing § 42(1) in support of opinion that “[i]f an elected town officer resigns before September 20 in an even-numbered year the vacancy is filled

by appointment for the balance of the year and a successor is elected at the general election in November who will take office on the next January 1.”)

I have considered all of the factors brought to my attention by the parties, including the practical problems associated with having voting booths available for a special election this spring; the need to implement, and perhaps fine-tune, the new election districts established by the October 20, 1997 order; the need to educate the Town residents about the new system; the need for a meaningful period of time to accommodate primaries and campaigning; and the need to act with all deliberate speed to remove, as the Town has put it, a “cloud [that] exists over the town government.” (Krinick Letter at 2.) With regard to the last of the above-mentioned factors, I have given special consideration to the Town’s assertion that the Town Board “has many important decisions to make,” and that “*the Court thought* that plaintiff[s] ought to have a representative on that board.” (Transcript of proceedings on February 14, 2000, at 6-7 (emphasis added).) This is a peculiar argument for the Town to make. Given its 12-year fight against a new electoral system, any concern on its part for the plight of the plaintiff class would ring somewhat hollow. As for the Court's concern, I have been told by those who represent the class of people in the Town of Hempstead that will be adversely affected by continuing the current state of affairs that the disadvantages of doing so are outweighed by the salutary effects of conducting the election in the fall.

On balance, I conclude that it would be inappropriate to order the new electoral system to be implemented before this fall. While the entire eight and one-half month period between now and the general election may not be necessary in order properly to prepare for the

new Town Board elections, it seems to me both unwise and inefficient to schedule the election in late September or October.

Accordingly, the election ordered by my October 20, 1997, order will occur on November 7, 2000.

So Ordered.

John Gleeson, U.S.D.J.

Dated: February 22, 2000
Brooklyn, New York